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August 16, 1993

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FEDERAL HIGHWAY ADMINISTRATION  
Office of the Chief Counsel  
Room 4232 HCC-10  
400 7th Street, SW  
Washington, DC 20590

FHWA-97-2180-22

Re: **MC-92-4; Federal Motor Carrier Safety Regulations--  
Transportation of Hazardous Materials**

Dear Sir or Madam:

Enclosed for filing in the above captioned proceeding are an original and one (1) copy of comments submitted on behalf of the National Industrial Transportation League.

Please advise should you have any questions.

Respectfully submitted,



Nicholas J. DiMichael  
Richard D. Fortin

**Attorneys for The National  
Industrial Transportation League**

Enclosure  
0165-030

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BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

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FHWA

***Federal Motor Carrier Safety Regulations --  
Transportation of Hazardous Materials***

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COMMENTS SUBMITTED **ON BEHALF** OF  
**THE** NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

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Dated: August 16, 1993

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BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

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FHWA

***Federal Motor Carrier Safety Regulations --  
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COMMENTS SUBMITTED **ON BEHALF** OF  
**THE** NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

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The National Industrial Transportation League ("League") respectfully submits these comments in response to the notice of proposed rulemaking issued by the Federal Highway Administration ("FHWA") of the U. S. Department of Transportation to amend part 397 of the Federal Motor Carrier Safety Regulations ("FMCSRs") by adding a new subpart B, Motor Carrier Safety Permits. The FHWA is proposing these amendments in order to implement Sections 8 and 15 of the Hazardous Materials Transportation Uniform Safety Act of 1990 ("HMTUSA"). The notice of proposed rulemaking ("NPRM") is published at 58 Fed. Reg. 33418 (June 17, 1993).

IDENTITY AND INTEREST OF THE  
NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

The League is a voluntary organization of shippers and groups and associations of shippers conducting industrial or commercial enterprises in all States of the Union. The League is the only nationwide organization representing shippers of all sizes and commodities, using all modes of transportation to move

their goods in interstate, intrastate and international commerce. League members are substantial users of motor carriers of all types and sizes, including carriers who will be impacted by the proposed regulations.

POSITION OF THE LEAGUE

The League's primary concern<sup>1</sup> with the proposed regulations is that they appear to extend the new safety permit program to all transporters of commodities listed in RSPA hazard classification Division 2.1, 49 C.F.R. §173.2, that could be described as a "liquid natural gas". If this were the case, then carriers transporting commodities such as propane, for example, presumably would be required to comply with the safety permit program. The League believes that Congress did not contemplate that the substantial costs of complying with the permit program requirements would be extended to thousands of business concerns involved in the transportation of commodities such as propane, butane and other similar liquefied gases.

Rather, in the League's view, Congress intended to extend coverage of the permitting requirements by statute only to transportation of the liquefied natural gas commodity known as "LNG". The League supports applying permit requirements on the relatively few companies who are transporters of LNG. The League does not believe, however, that it makes safety or economic sense to extend the substantial and costly permit requirements to transporters of all liquefied gas commodities that are within RSPA hazard classification Division 2.1.

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<sup>1</sup> The League would also note (1) that FHWA and RSPA should be aware that the regulation of carriers under the permit program by FHWA should be consistent with RSPA's expected implementation of shipper compliance rules and vice-versa, and, (2) that the FHWA's obligation to extend safety ratings to carriers will increase commensurate with the breadth of the application of the permit program.

**THE PERMIT REQUIREMENTS SHOULD NOT BE  
EXTENDED TO ALL LIQUEFIED NATURAL GAS PRODUCTS**

Section 8 of HMTUSA provides that:

The Secretary shall establish by regulation the hazardous materials and quantities thereof to which this subsection applies; except that this subsection shall apply, at a minimum, to all transportation by a motor carrier, in quantities established by the Secretary, of . . . ***a liquefied natural gas.***

49 U.S.C. App. § 1805(d)(5).

The FHWA's proposal seems to extend permit requirements to transporters of all liquefied natural gases in Division 2.1 of 49 C.F.R. § 173.2. If so interpreted, this would mean that ***all*** liquefied natural gases in Division 2.1, including butane, propane etc., would be included in the permit program. The League believes that Congress did not intend such a broad reading of "liquefied natural gas" as the phrase is used in the statute. Rather, the League suggests that Congress intended to require by statute safety permits only for shipments of "LNG", which contains a high methane content, and not all types of liquefied natural gas.<sup>2</sup> Such an interpretation is justified because a broad reading would impose an undue and onerous regulatory burden on small businesses that deal in the distribution of propane, butane and other similar gases. A more limited interpretation would be consistent with Congress' goals and would not have a deleterious effect on virtually thousands of small business concerns.

The League does not believe that Congress intended that small transporters of propane and butane gas should be affected by the safety permit regulations. Application of these regulations to them would impose an onerous burden. These small operations already comply with federal hazardous materials packaging and

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<sup>2</sup> Indeed, RSPA's current Hazardous Materials Table, 49 C.F.R. §172.01, describes "liquefied natural gas" and "LNG" by referring to the description of "methane, etc. (UN 1992)" as listed and identified in the HMT.

labeling laws. To impose this additional burden would levy substantial costs with little if any resulting marginal benefits.

A clarification of the proposal may be all that is necessary. The FHWA's characterization of liquefied natural gas carriers in the NPRM suggests that it does not intend to extend the permit program to transporters of all Liquefied Natural Gases listed in Division 2.1 of the hazardous classification. For example, on page 33420, the NPRM states that there will be no phase-in period for liquefied natural gas permitting requirements because the imposition of safety permits on this group of carriers would not result in an undue economic burden. The NPRM explains that there are relatively few carriers and shipments of this type of material and that transporters of liquefied natural gas typically already have greater financial responsibility coverage than is required by the new proposal.

The explanation in the NPRM that there are a small number of liquefied natural gas transporters suggests that FHWA is only considering the distribution of LNG and not all types of natural gas. These former carriers are truly small in number. In contrast, there are literally thousands of small concerns that deal in propane gas distribution that do not meet the profile drawn in the NPRM.

#### CONCLUSION

The statute required, at a minimum, that transporters of "liquefied natural gas" be covered by the new safety permit requirements. The League believes, as a matter of statutory construction and policy, that Congress intended to require that the permit requirements be extended to shipments of LNG. The discussion

contained in the NPRM appears to contemplate the same conclusion and the League respectfully submits that the proposal should be clarified in this regard.

Respectfully submitted,

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